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No. 95-390

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1995

ESTHER R. SYLVESTER, HONORABLE, Administrative Judge-Family Division in her official and individual capacity; *et al.*,

Petitioners,

V.

ANDRE M. BRYANT; FATHERS AND CHILDREN'S EQUITY, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit (No. 94-1635)

THE CONFERENCE OF CHIEF JUSTICES' MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The Conference of Chief Justices respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consent of counsel for the petitioner has been obtained. The consent of counsel for the respondent was requested but not obtained.

The Conference of Chief Justices was founded in 1949 and incorporated in 1983 as an association of the highest judicial officers of each state of the United States; the District of Columbia; the Commonwealth of Puerto Rico; the territories of American Samoa, Guam, and the Virginia Islands; and the Commonwealth of the Northern Mariana Islands. The mission of the Conference of Chief Justices is to improve the administration of justice in the states, commonwealths, and territories of the United States. The Conference accomplishes this mission by the effective mobilization of the collective resources of its members to develop, exchange, and disseminate information and knowledge of value to state judicial systems; to educate, train, and develop leaders to become effective managers of state judicial systems; to promote the vitality, independence, and effectiveness of state judicial systems; to develop and advance policies in support of common interests and shared values of state judicial systems; and to support adequate funding and resources for the operations of the courts.

In furtherance of its respective objectives and principles, the Conference holds annual meetings to discuss matters of common importance, and when appropriate, to adopt a unified position and voice a single opinion on important issues. This case presents such an issue.

The Conference of Chief Justices seeks leave here to brief the principle that immediate appellate review should be available for federal district court denials of motions to dismiss collateral attacks on state court judgments for lack of subject matter jurisdiction. Absent such a principle, the *Rooker-Feldman* doctrine, embodying limitations on the jurisdiction of lower federal courts as well as important considerations of comity and federalism, will be reduced to little more than a claim preclusion defense.

Both the U.S. Court of Appeals for the Third Circuit and the Petitioners confined their treatment of this question to the applicability of the collateral order doctrine. The brief that the Conference of Chief Justices seeks leave to file addresses the need for recognition of a rule permitting interlocutory review, including but not limited to collateral order review, to maintain the vitality of the *Rooker-Feldman* doctrine. The Conference believes its brief will assist the Court in full consideration of the issue presented in the petition.

WHEREFORE the Conference of Chief Justices respectfully requests that the Court grant leave to file the attached brief *amicus curiae* in support of the Petition for Writ of Certiorari.

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BRIEF *AMICUS CURIAE*

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case presents the question whether a district court's denial of a motion to dismiss a claim for lack of subject matter jurisdiction, on the ground that it is a collateral attack on a state court judgment prohibited by the *Rooker-Feldman* doctrine, is immediately reviewable.

On June 8, 1995, the United States Court of Appeals for the Third Circuit held that the denial of a motion to dismiss based on the *Rooker-Feldman* doctrine is not immediately appealable, but must await the conclusion of the proceedings in the district court. *Bryant v. Sylvester*, 57 F.3d 308, 316 (3d Cir. 1995). The Court then dismissed the appeal for lack of jurisdiction under 28 U.S.C. § 1291. *Id.* In doing so, the court adopted an unnecessarily constrained view of its power of review that eviscerates the *Rooker-Feldman* doctrine, and failed to properly balance the

considerations implicated in *Rooker-Feldman* with those involved in the final judgment rule.

Because the decision denigrates the integrity of judgments rendered by state courts by allowing precisely what the *Rooker-Feldman* doctrine prohibits, direct review of state court judgments by the federal courts, Amicus, the Conference of Chief Justices, hereby supports the Petition for Writ of Certiorari filed in this case, and requests that this Court assume jurisdiction, and reverse the Order of the Court of Appeals for the Third Circuit dated June 8, 1995.

II. ARGUMENT

A. The *Rooker-Feldman* Doctrine Reflects a Congressionally Mandated Limitation of the Subject-Matter Jurisdiction of the Lower Federal Courts.

The *Rooker-Feldman* doctrine takes its name from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), where this Court held that a party who receives an adverse ruling from the highest court of a state may not bring a subsequent action in a federal district court to attack that judgment, and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), where this Court once again acknowledged that the United States district courts lack jurisdiction to review final judgments of a state court in judicial proceedings. *Accord Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 296 (1970) (holding that lower federal courts have no power to sit in direct review of state court decisions). Instead of mounting a collateral attack, the aggrieved party must apply to the United States Supreme Court pursuant to 28 U.S.C. § 1257.

B. Weighing the Importance of the *Rooker-Feldman* Doctrine Should Lead to the Conclusion That Collateral Order Review Is Permitted.

The cases relied upon by the court below, 57 F.3d at 312, holding that denials of motions to dismiss on jurisdictional grounds are not appealable as collateral orders are not dispositive here because the *Rooker-Feldman* doctrine incorporates interests over and above the typical jurisdictional issue. As Justice Scalia observed in *Lauro Lines SRL v. Chasser*, 490 U.S. 495, 498-99 (1989) (Scalia, J., concurring), the conclusion that a certain type of order is not appealable as a collateral order is more correctly a conclusion that it is insufficiently important to overcome the policies militating against interlocutory appeals.[1]

In *Digital Equipment Corp. v. Desktop Direct, Inc.*, ___ U.S. ___, 114 S. Ct. 1992, 2001, 128 L.Ed.2d 842, ___ (1994), the Court emphasized the need to make a judgment about the value of the interests that would be lost through rigorous application of the final judgment requirement. Justice Souter, writing for a unanimous Court, held that irretrievable loss can hardly be trivial where statutory and constitutional rights are concerned. ___ U.S. at ___, 114 S.Ct. at 2002, 128 L.Ed.2d at ___. Thus, the policy of 28 U.S.C. § 1291 to avoid piecemeal adjudication should be reconciled with policies embodied in other statues and the Constitution and construed to foster harmony with other statutory and constitutional law. *Id.*

The comity and federalism concerns implicated in *Rooker-Feldman*, itself derived from 28 U.S.C. § 1257, are not unlike the separation of powers and government

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[1] Justice Scalia observed that the majority concluded that a refusal to give effect to a forum selection clause was not immediately appealable even though the right to be free of trial was not only not fully vindicated but in fact was positively destroyed by permitting the trial to occur. *Id.*

effectiveness concerns which have been found persuasive for collateral order purposes. *See Digital Equipment*, ___ U.S. at ___, 114 S.Ct. at 1997, 128 L.Ed.2d at ___. Justice Black described such considerations in *Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 286 (1970):

> While the lower federal courts were given certain powers in the 1789 Act, they were not given any power to review directly cases from state courts, and they have not been given such powers since that time. Only the Supreme Court was authorized to review on direct appeal the decisions of state courts. Thus from the beginning we have had in this country two essentially separate legal systems. Each system proceeds independently of the other with ultimate review of this Court of the federal questions raised in either system. Understandably this dual court system was bound to lead to conflicts and frictions. Litigants who foresaw the possibility of more favorable treatment in one or the other system would predictably hasten to invoke the powers of whichever court it was believed would present the best chance of success. Obviously this dual system could not function if state and federal courts were free to fight each other for control of a particular case. Thus, in order to make the dual system work and "to prevent needless friction between state and federal courts," *Oklahoma Packing Co. v. Gas Co.*, 309 U.S. 4, 9 (1940), it was necessary to work out lines of demarcation between the two systems. Some of these limits were spelled out in the 1789 Act. Others have been added by later statutes as well as judicial decisions.

The considerations inherent in the *Rooker-Feldman* doctrine thus date from the very beginnings of our history as

a Nation and go to the essence of the federal system established by the Constitution. It is beyond dispute that the right of the beneficiary of a state court judgment to be free of direct review in the federal system is simply annihilated if the only means of vindicating the right is through appeal after final judgment in the federal system. At some point, the aggregation of important interests -- lack of jurisdiction, comity, federalism, intersystem claim preclusion -- must tip the balance in favor of immediate review.

Rooker-Feldman and the principles embodied by it guarantee that issues completely and finally litigated in a state court will not be retried in federal court. Because of this protection, where a federal district court denies a motion to dismiss based on *Rooker-Feldman*, immediate appellate review is essential to continued vitality of the doctrine. If a case proceeds due to an erroneous ruling by the district court, uncorrected on review, the *Rooker-Feldman* doctrine is no more than a claim preclusion defense. The jurisdictional, prudential and constitutional dimensions that are its core will have vanished.

C. The Court Below Should Have Found Jurisdiction Because the Collateral Order Doctrine Is Not the Exclusive Means for Appellate Court Review.

Federal courts have never exalted mere formalism in the mode of review invoked by appellants to preclude review of important substantive matters. Thus, Federal courts have construed appeals as petitions for extraordinary writs, and vice versa.

In *United States v. Bertoli*, 994 F.2d 1002, 1014 (3d Cir. 1993), the court held that it lacked jurisdiction under 28 U.S.C. § 1291 and the collateral order doctrine, but treated the abortive appeal as if it were a petition for writ of mandamus or prohibition. The court held that it could do so when fundamental undecided issues were present that implicated not only the parties' interests but those of the

judicial system itself. *Id. Accord Allegheny Int'l, Inc. v. Allegheny Ludlum Steel Corp.*, 920 F.2d 1127, 1133 (3d Cir. 1990)(noting ample authority for court to treat appeal as petition for mandamus); *In re Pruitt*, 910 F.2d 1160, 1167 (3d Cir. 1990)(appeal treated as request for mandamus when there was no jurisdiction of appeal); *Gold v. Johns-Manville Sales Corp.*, 723 F.2d 1068, 1074 (3d Cir. 1983)(treating improper appeals as petitions for mandamus); *Coastal Steel Corp. v. Tilghman Wheelabrator Ltd.*, 709 F.2d 190, 197 (3d Cir.), *cert. denied*, 464 U.S. 938 (1983)(illustrating practice of treating attempted appeal as petition under 28 U.S.C. § 1651); *Nascone v. Spudnuts, Inc.*, 735 F.2d 763 (3d Cir. 1984)(same); *Cheyney State College Faculty v. Hufstedler*, 703 F.2d 732, 736 (3d Cir.1983)(attempted appeal of stay order treated as petition for mandamus); *United States v. RMI Co.*, 599 F.2d 1183, 1187 (3d Cir. 1979)(petition for writ of mandamus properly invoked power of court of appeals since order was appealable as a collateral order).

Even the most conservative notion of the reach of a writ of mandamus or prohibition holds that the writ will lie to restrain a lower court from exceeding its jurisdiction. *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 661 (1978) (quoting *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943)); *Belle v. Sellevold*, 713 F.2d 1396, 1402-03 (8th Cir.), *cert. denied*, 464 U.S. 1070 (1983). In *Ex parte Chicago, Rock Island & Pacific Ry.*, 255 U.S. 273, 275 (1921), this Court held that:

> If the lower court is clearly without jurisdiction, the writ will ordinarily be granted to one who at the outset has objected to the jurisdiction, has preserved his rights by appropriate procedure and has no other remedy.

Accord United States v. Boe, 543 F.2d 151, 159 (C.C.P.A. 1976)(ruling that the court must grant writ upon finding that lower court has stepped beyond its lawful bounds). Thus, a litigant bringing a *Rooker-Feldman* objection before the district court should be entitled to prompt review. The ruling

of the court below is tantamount to a holding that a district court acting without subject matter jurisdiction is subject to no restraint save upon appeal after final judgment.

Particularly where a lower court overrules a defense to jurisdiction in circumstances impinging on matters of comity and federalism, the courts have shown no hesitation in granting immediate relief. In *Hernandez-Agosto v. Romero-Barcelo*, 748 F.2d 1 (1st Cir. 1984), the court issued a writ of mandamus to compel remand of a case removed from the courts of the Commonwealth of Puerto Rico without jurisdiction. The court found that exceptional circumstances justified granting the writ:

> But of overarching importance, far outlasting the tempests of the present controversies, is the importance of both Commonwealth and federal courts adhering to their proper jurisdiction . . . The analysis leading to this result, if allowed to stand, would apply equally to a host of other cases, thus needlessly interfering with Commonwealth legislative, executive and court proceedings, and undermining basic principles of comity. Those principles suggest that such unauthorized intrusions should be speedily corrected.

Id. at 4-5. *See Will v. United States*, 389 U.S. 90, 95 (1967) (*citing Maryland v. Soper*, 270 U.S. 9 (1926)); *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 31 (1943)(considerations of comity between state and federal courts can provide exceptional circumstances to justify extraordinary writ).

Similarly, in *Belle v. Sellevold*, 713 F.2d 1396 (8th Cir.), *cert. denied*, 464 U.S. 1070 (1983), the court rejected the notion that appeal after final judgment is a sufficient remedy for an erroneous exercise of jurisdiction. The court noted that allowing the case to proceed might well render the erroneous exercise of jurisdiction unreviewable, because the

defendants would not necessarily lose on the merits. *Id.* at 1403. If plaintiffs lost, they were unlikely to assign as error the exercise of the very jurisdiction that they had urged on the court. The court continued:

> Even if defendants do lose on the merits, we think their right to try their state-law action in the state courts is so fundamental, and so clearly outside the jurisdiction of the federal courts, that they should not be compelled to go through a federal trial. An appeal from an adverse judgment, even a successful appeal, would not undo the fact that defendants had been unlawfully compelled to try their case in a federal forum.

Id. In another case where jurisdiction was lacking, *United States v. Boe*, 543 F.2d 151, 160 (C.C.P.A. 1976), the court rejected final order appeal as a remedy, saying not only does the "remedy" overlook the anomaly of a court trying a case without jurisdiction to do so, but reliance upon the remedy of appeal after final judgment as the sole justification for denying an extraordinary writ would effectively nullify the All Writs Act, 28 U.S.C. § 1651(a).

In confining itself to the collateral order doctrine, and then declaring itself without jurisdiction, the court departed from established practice and precedent, and in doing so reached the anomalous conclusion that the rule prohibiting lower federal court review of state court judgments is adequately protected through the very process that the rule forbids.

III. CONCLUSION

If the *Rooker-Feldman* doctrine is to protect the finality of state court judgments and the integrity of the state courts, federal practice must provide the mechanism for prompt review and correction of erroneous denials of motions to dismiss on *Rooker-Feldman* grounds. The Court of Appeals for the Third Circuit erred in concluding that it

lacked jurisdiction to review immediately denial of a motion to dismiss based on *Rooker-Feldman*. The principle of immediate review of erroneous exercises of jurisdiction by district courts in violation of the *Rooker-Feldman* doctrine is essential to the continued vitality of the rule. For this reason, the Conference of Chief Justices supports the Petition for Writ of Certiorari and respectfully requests that this Court grant certiorari to review the Order of the Court of Appeals for the Third Circuit.

Respectfully submitted,

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